A

BASAPPA SANGANABASAPPA BAHVIKATTI v. T RAMESH TANGAVELU & ANOR

SUPREME COURT, INDIA
(2014) 10 SUPREME COURT CASES 789
JASTI CHELAMESWAR J
B DR AK SIKRI J
[CIVIL APPEAL NO: 9393 OF 2014†]
10 OCTOBER 2014

C ***TORT:*** *Motor Vehicles Act, 1988 – S. 166 – Compensation – Permanent disability – Estimation of functional disability or loss of earning capacity – Functional disability distinguished from physical disability – Manual labour cases where loss of limb is often equal to loss of livelihood – Impact on functional disability – Appellant working as goundi at building construction sites requires good health and extreme fitness as it is a strenuous task which involves lot of physical activities –* D *Appellant's permanent disability amounting to 58% of whole body according to medical evidence – In view of suffering from general weakness and incapability of doing heavy work, inability to walk and stand for a long time, his functional disability is to be taken at 85%*

TORT: *Motor Vehicles Act, 1988 – S. 166 and Sch. II – Compensation –* E *Determination – Disability arising out of non-fatal accidents – Reiterated loss of future earning is to be calculated under formula provided in Note 5 of Sch. II – Accordingly on facts loss of future income would work out to Rs 5,35,500 [Rs 3750 x 85% (functional disability) x 12 x 14] – For pain and suffering, amount of Rs 25,000 awarded by High Court, increased to Rs 60,000 – Total compensation* F *payable to appellant comes to Rs 6,72,000 as against Rs 2,59,500, awarded by High Court – Appellant shall also be entitled to interest @ 9% p.a. from date of claim petition till date of payment – Debt, Financial and Monetary Laws – Interest – Compensation as interest/Interest on compensation*

CONSTITUTIONAL LAW: *Constitution of India – Art. 136 – Costs of Rs 25,000* G *awarded by Supreme Court*

Held:

Once the High Court had itself accepted the evidence of PW 3 doctor who had treated the appellant and issued the disability certificate stating the H physical disability at 58%, as credible and reliable, there was no reason to treat the functional disability at 25%.

In manual labour cases, loss of limb is often equivalent to loss of livelihood. Applying this principle to the facts of the present case, the appellant was working as goundi ie, at the building construction sites. Such a work requires I

† Arising out of SLP (C) No. 33883 of 2013. From the Judgment and Order dated 11-3-2013 of the High Court of Karnataka, Circuit Bench at Dharwad in MFA No. 21150 of 2011.

good health and extreme fitness as it is a strenuous task which involves lot of physical activities. The appellant has suffered permanent physical disability of 58% to the whole body. It has also come on record that he suffers from general weakness and is not capable of doing heavy work. He is even unable to walk and stand for a long time. For this reason, his functional disability is to be taken at 85%.

Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161

Syed Sadiq v. United India Insurance Co. Ltd., (2014) 2 SCC 735 : (2014) 2 SCC (Civ) 192 : (2014) 4 SCC (Cri) 607, applied

Arvind Kumar Mishra v. New India Assurance Co. Ltd., (2010) 10 SCC 254 : (2010) 4 SCC (Civ) 153 : (2010) 3 SCC (Cri) 1258

Yadava Kumar v. National Insurance Co. Ltd., (2010) 10 SCC 341 : (2010) 4 SCC (Civ) 168 : (2010) 3 SCC (Cri) 1285, cited

For the purposes of calculating the compensation, the formula contained in Note 5 of the Second Schedule to the Motor Vehicles Act, 1988 for disability in non-fatal accidents is applicable. Applying the aforesaid formula, loss of future income would work out to Rs 5,35,500 (Rs 3750 x 85% x 12 x 14). Similarly, for pain and suffering, the amount of Rs 25,000 awarded by the High Court, is increased to Rs 60,000.

Total compensation payable to the appellant comes to Rs 6,72,000 as against Rs 2,59,500, awarded by the High Court. The appellant shall also be entitled to interest @ 9% per annum from the date of claim petition till the date of payment.

MCD v. Uphaar Tragedy Victims Assn., (2011) 14 SCC 481 : (2013) 1 SCC (Civ) 897 : (2013) 2 SCC (Cri) 555 : (2013) 1 SCC (L&S) 305, followed

Basappa v. T. Ramesh, MFA No. 21150 of 2011, decided on 11-3-2013 (Kar), modified

Appeal allowed with costs assessed at Rs 25,000 SB-D/54086/CVR

Advocates who appeared in this case:

For the appellant - Sharannagouda Patil and Ms Supreeta Patil (for M/s S. Legal Associates), Advocates

For the respondents - Abhinav Mukerji, Advocate

Chronological list of cases cited:

Syed Sadiq v. United India Insurance Co. Ltd. (2014) 2 SCC 735 : (2014) 2 SCC (Civ) 192 : (2014) 4 SCC (Cri) 607

Basappa v. T. Ramesh MFA No. 21150 of 2011, decided on 11-3-2013 (Kar)

MCD v. Uphaar Tragedy Victims Assn. (2011) 14 SCC 481 : (2013) 1 SCC (Civ) 897: (2013) 2 SCC (Cri) 555 : (2013) 1 SCC (L&S) 305

Raj Kumar v. Ajay Kumar (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161

Yadava Kumar v. National Insurance Co. Ltd. (2010) 10 SCC 341 : (2010) 4 SCC (Civ) 168 : (2010) 3 SCC (Cri) 1285

Arvind Kumar Mishra v. New India Assurance Co. Ltd. (2010) 10 SCC 254 : (2010) 4 SCC (Civ) 153 : (2010) 3 SCC (Cri) 1258

A

ORDER

[1] Leave granted. Unwrapping the events, which have led to the filing of the instant appeal depict the following scenario: on 23-9-2007, the appellant after completion of his goundi (working at building construction sites) work, was returning from Navanagar, Karnataka on his motorcycle bearing
B Registration No. KA 29 J 731. He was driving slowly and cautiously on the left side of the road. At that time a bus bearing Registration No. KA 29/6967 came from the opposite direction in high speed and in a rash and negligent manner as to endanger human life, dashed into the motorcycle of the appellant. This happened near Simikeri Bypass Cross on Gaddanakeri Hubli
C Road at about 2030 hrs. Due to the said accident, the appellant sustained grievous injuries on his head and all over his body. He was immediately admitted to District Government Hospital, Bagalkot where he got preliminary treatment, whereafter he was shifted to SHK Hospital, Bagalkot for further treatment. After getting some treatment in the said hospital, the
D appellant had to be shifted again to Dr Kerudi Hospital, Bagalkot because of grievous head injuries and there he was treated by Dr Mohan Wamaske, Neurologist. He underwent a surgical operation in the said hospital where he remained as indoor patient for 10 days. Notwithstanding this treatment, the appellant could not be completely cured and has suffered permanent
E disability of 58% to the whole body.

[2] We may record at this stage that the aforesaid facts pertaining to the accident caused due to rash and negligent driving of the bus and the nature and extent of injuries suffered by the appellant stand established before the Motor Accidents Claims Tribunal (for short "MACT"). It would also be
F worthwhile to mention that against the driver of the bus, a case under Sections 279 and 334 of the Penal Code, 1860 was also registered at Kaladgi Police Station. After completing the investigation, even the charge-sheet has been filed against the driver, though the outcome of the said case is not known from the records.

G **[3]** Being a victim of the said accident resulting into the aforesaid serious injuries and incapacitation of his body, the appellant filed the claim petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs 15,00,000. This petition filed before MACT at Bagalkot was registered as MVC No. 296 of 2002. In this petition, the appellant had impleaded
H Respondent 1 herein, who was the driver of the vehicle and Respondent 2, Manager, Reliance General Insurance Co. Ltd., which had insured the offending vehicle. The appellant examined himself as PW 1 and narrated the details of the incident. Another significant and material witness produced by him was Dr Sanjeev S. Kalasoor (PW 3), who deposed about the injuries
I suffered by the appellant and produced copy of the disability certificate dated

11-2-2009 and other medical records. The respondents also led their evidence. Arguments were heard. The said case culminated in the decision dated 25-11-2010 that was rendered by MACT recording a categorical and definite finding to the effect that the accident in question was caused due to the rash and negligent act of the driver. The Tribunal, thus, allowed the petition but awarded a compensation of Rs 93,800 with interest @ 6% p.a. from the date of accident till the date of realisation. Different heads under which the said compensation was awarded, thereby arriving at the aforesaid figure of Rs 93,800 are as under:

		Amount (Rs)
1.	Pain and sufferings	Rs 10,000
2.	Medical expenses	Rs 35,000
3.	Loss of future income	Rs 46,800
4.	Loss of amenities, diet, nutrition and attendant charges	Rs 2,000
	Total	*Rs 93,800*

[4] The appellant was not satisfied with the poor amount of compensation and, thus, approached the High Court of Karnataka, Dharwad Bench by filing appeal ie, MFA No. 21150 of 2011 (MV). The High Court has enhanced the compensation to Rs 2,59,500 *vide* judgment dated 11-3-2013[1]. The breakup of compensation awarded by the High Court under different heads is as follows:

		Amount (Rs)
1.	Pain and suffering	Rs 25,000
2.	Incidental expenses	Rs 10,000
3.	Medical expenses	Rs 35,000
4.	Loss of income during laid up period	Rs 12,000
5.	Loss of amenities	Rs 20,000
6.	Loss of future income	Rs 1,57,500
	Total	*Rs 2,59,500*

[5] Still not satisfied, the present appeal has been preferred by the appellant in this court for enhancement of compensation.

1. *Basappa v. T. Ramesh*, MFA No. 21150 of 2011, decided on 11-3-2013 (Kar)

A **[6]** From the perusal of the judgment of the High Court, it gets revealed that the Tribunal as well as the High Court has accepted the injuries certificate produced by the doctor. On going through this certificate along with disability certificate, CT scan reports, medical bills and case-sheets, etc. which were produced by the appellant on record, the High Court has
B recorded that the appellant has sustained grievous injuries in his head and all over the face. As per the testimony of the doctor (PW 3), CT brain reveals acute subdural left front temporal haemorrhagic with midline shift and mass effect. The doctor examined the appellant as late as on 11-2-2009 and found that the appellant's medical condition of on and off headache, giddiness and
C vertigo impaired memory, altered speed and imbalance while walking continuous to persist. He had an operative scar left side of scalp (head) motor aphasia and positive Romberg's. The courts below have also accepted the fact that the appellant is suffering from permanent disability of 58% to the whole body.

D **[7]** Having regard to the aforesaid injuries suffered by the appellant in the said accident and the number of days for which the appellant was treated and underwent physical and mental pain and suffering, the High Court enhanced the compensation under this head from Rs 10,000, as awarded by the Tribunal, to Rs 25,000. Insofar as reimbursement of medical expenses is
E concerned, it is maintained at Rs 35,000 inasmuch as that is the actual amount spent by the appellant, which is evident from the medical bills produced by him. However, considering that the appellant was indoor patient in a private hospital for more than 10 days, Rs 10,000 is awarded for incidental expenses such as conveyance, nourishment and attendant charges. As regards loss of income during laid up period, the amount of Rs 12,000
F has been awarded on the ground that the appellant had been earning Rs 125 per day ie, Rs 3750 per month and as he was under treatment and rest for about three months, loss of income was to the tune of Rs 12,000.

[8] Insofar as compensation in respect of loss of amenities is concerned,
G the High Court has enhanced the compensation from Rs 2000 to Rs 20,000 considering the disability reflected in the evidence produced by the appellant, as according to the High Court, the appellant will have to undergo discomfort and unhappiness in his future life because of the said accident. Major head of compensation is loss of future income. Here, the High Court has observed that though the doctor has assessed permanent disability at 58%
H to the whole body, it may be an exaggeration and justice would be met if functional disability is taken at 25%. On this basis, multiplier of 14 is applied, keeping in view of the age of the appellant, and loss of future income is assessed at Rs 1,57,500 and this figure is worked out by applying the following formula: Rs 3750 x 25% x 12 x 14.

I

[9] The learned counsel for the appellant made grievance only on three counts. In the first instance, he pleaded for increasing the amount of physical and mental pain and suffering. His vehement submission was that the loss of future income is not assessed appropriately by the High Court. He pointed out that when the permanent disability was 58%, for the purposes of calculating the loss of future income, it had to be taken at 100%. Another plea of the appellant was that interest should have been granted at the rate of 9% instead of 6%. We find force in the submissions of the learned counsel on all these aspects.

[10] We are of the opinion that once the High Court had itself accepted the evidence of PW 3 the doctor who had treated the appellant and issued the disability certificate as credible and reliable, there was no reason to treat the "functional disability" at 25%. The High Court should have acted upon the said disability certificate taking the permanent disability at 58% which is to the whole body. It is to be borne in mind that before the incident, the appellant was hale and healthy who enjoyed robust health as it has emerged from the record that he was working as goundi ie, at the building construction sites. Because of the permanent disability of the nature described above, PW 3 has very categorically stated in his testimony that the appellant is unable to walk and stand for a long time and is not capable of doing heavy work. It is also testified that he is suffering general weakness as well. This would lead us to the conclusion that the appellant suffers 85% functional disability.

[11] On arriving at this conclusion, we are bolstered by the judgment of this court in *Raj Kumar v. Ajay Kumar*[2] wherein this aspect is lucidly explained with impeccable erudition, as is discerned from the following passages of the said judgment, reading whereof would amply demonstrate that the nuances are so exhaustively dealt with, leaving no scope for restating, much less refuting or refining: (SCC pp. 348-52, paras 8, 10-14 & 19)

> 8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to

2. (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161.

engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('the Disabilities Act', for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

***

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.*[3] and *Yadava Kumar v. National Insurance Co. Ltd.*[4])

3. (2010) 10 SCC 254 : (2010) 4 SCC (Civ) 153 : (2010) 3 SCC (Cri) 1258.
4. (2010) 10 SCC 341 : (2010) 4 SCC (Civ) 168 : (2010) 3 SCC (Cri) 1285.

12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings',

A if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other
B suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.

***

C 19. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss
D of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him
E subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages
F of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

[12] The principle laid down in the aforesaid judgment is recently followed in *Syed Sadiq v. United India Insurance Co. Ltd.*[5] After quoting paras. 11 and
G 13 from *Raj Kumar*[2], the court worked out the compensation treating the disability at 85%, whereas the High Court had determined the disability at 65%. The following discussion ensued in this behalf: (*Syed Sadiq* case[5], SCC p. 740, para 7)

H 7. Further, the appellant claims that he was working as a vegetable vendor. It is true that a vegetable vendor might not require mobility to the extent that he sells vegetables at one place. However, the occupation of vegetable vending is not confined to selling vegetables from a particular

I

5. (2014) 2 SCC 735 : (2014) 2 SCC (Civ) 192 : (2014) 4 SCC (Cri) 607.

2. *Raj Kumar v. Ajay Kumar* (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161.

location. It rather involves procuring vegetables from the wholesale market or the farmers and then selling it off in the retail market. This often involves selling vegetables in the cart which requires 100% mobility. But even by conservative approach, if we presume that the vegetable vending by the appellant claimant involved selling vegetables from one place, the claimant would require assistance with his mobility in bringing vegetables to the marketplace which otherwise would be extremely difficult for him with an amputated leg. We are required to be sensitive while dealing with manual labour cases where loss of limb is often equivalent to loss of livelihood. Yet, considering that the appellant claimant is still capable to fend for his livelihood once he is brought in the marketplace, we determine the disability at 85% to determine the loss of income.

[13] Applying the aforesaid test to the facts of the present case, as already pointed out above, the appellant was working as goundi ie, at the building construction sites. Such a work requires good health and extreme fitness as it is a strenuous task which involves lot of physical activities. The appellant has suffered permanent disability of 58% to the whole body. It has also come on record that he suffers from general weakness and is not capable of doing heavy work. He is even unable to walk and stand for a long time. For this reason, we have already mentioned that his functional disability is to be taken at 85% as was done in *Syed Sadiq*[5].

[14] For the purposes of calculating the compensation, the formula contained in Note (5) of the Second Schedule to the Motor Vehicles Act 1988 is to be applied which is as under:

5. Disability in non-fatal accidents.

The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents:

Loss of income, if any, for actual period of disablement not exceeding fifty-two weeks.

PLUS either of the following:

(a) In case of permanent total disablement the amount payable shall be arrived at by **multiplying the annual loss of income by the multiplier applicable to the age on the date of determining the compensation,** or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under Item (a) above.

Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under the Workmen's Compensation Act, 1923. (emphasis supplied)

A **[15]** Applying the aforesaid formula, loss of future income would work out to Rs 5,35,500 (Rs 3750 x 85% x 12 x 14). Similarly, for pain and suffering, the amount of Rs 25,000 awarded by the High Court appears to be on the lower side. We increase this amount to Rs 60,000.

B **[16]** We are also of the view that the appellant should get interest @ 9% per annum from the date of claim petition till the payment having regard to the *ratio* of the judgment in *MCD v. Uphaar Tragedy Victims Assn*.[6]

C **[17]** In this manner, the total compensation which would be payable to the appellant comes to Rs 6,72,000 as against Rs 2,59,500, awarded by the High Court. We enhance the compensation accordingly with the direction that the appellant shall also be entitled to interest @ 9% per annum on the aforesaid amount from the date of claim petition till the date of payment. The appeal is allowed in the aforesaid manner with costs of Rs 25,000.

D

6. (2011) 14 SCC 481 : (2013) 1 SCC (Civ) 897 : (2013) 2 SCC (Cri) 555 : (2013) 1 SCC (L&S) 305.

E

F

G

H

I